

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON

**FILED**

MR - 9 2004

TERESA L. DEPPNER, CLERK  
U.S. District & Bankruptcy Courts  
Southern District of West Virginia

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 2:04-cv-00218

WESTVEN LIMITED PARTNERSHIP

Defendant.

04 MBD 10104

**COMPLAINT**

COMES NOW Plaintiff, the United States of America, on behalf of its agency, the United States Small Business Administration, and for its cause of action states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. This is a civil action brought by the United States of America on behalf of its agency, the United States Small Business Administration (hereinafter, "SBA"), whose central office is located at 409 Third Street, S.W., Washington, DC 20416.

2. Jurisdiction is conferred on this Court by virtue of the Small Business Investment Act of 1958, as amended (hereinafter, the "Act"), Sections 308(d), 311, and 316; 15 U.S.C. §§ 687(d), 687c, 687h; and 28 U.S.C. § 1343.

3. Defendant, WestVen Limited Partnership (hereinafter, "WestVen"), is a West Virginia limited partnership having filed its Certificate of Limited Partnership on December 4, 1992 and its Amended and Restated Certificate of Limited Partnership on

July 7, 1993. WestVen currently maintains its principal place of business at 208 Capitol Street, Suite 300, Charleston, West Virginia 25301. Venue is therefore proper under 15 U.S.C. §§ 687(d), 687h, and 28 U.S.C. §1391(b).

#### **STATEMENT OF FACTS**

4. WestVen was licensed by SBA as a small business investment company ("SBIC") on November 1, 1993, SBA License No. 03/03-0197, under Section 301 of the Small Business Investment Act, 15 U.S.C. § 681(d), solely to do business under the provisions of the Act and the regulations promulgated thereunder.

5. On or about December 14, 1995, in accordance with Section 303 of the Act, 15 U.S.C. § 683b, SBA provided financing to WestVen in the principal sum of \$2,000,000.00 through the purchase or guarantee of a subordinated debenture ("Debenture No. 1") issued by WestVen, identified as Loan No. 0464165-00. The Debenture has an outstanding balance of \$2,090,305.76 as of February 15, 2004.

6. On or about December 12, 1996, in accordance with Section 303 of the Act, 15 U.S.C. § 683b, SBA provided further financing to WestVen in the principal sum of \$2,000,000.00 through the purchase or guarantee of a subordinated debenture ("Debenture No. 2") issued by WestVen, identified as Loan No. 04646351-10. The Debenture has an outstanding balance of \$2,101,543.01 as of February 15, 2004.

7. By letter dated August 17, 2001, SBA informed WestVen that it had reached a level of capital impairment that constituted an event of default with an opportunity to cure with regard to Debenture Nos. 1 and 2.

8. By letter dated August 22, 2001, WestVen submitted a wind-down plan for its business and over the course of the next two years, WestVen kept SBA informed of the progress of this plan and SBA monitored the financial condition of WestVen.

9. In December 2003, the parties agreed to a liquidation of WestVen and have worked together to cause this legal action to be filed.

**COUNT ONE**  
**CAPITAL IMPAIRMENT**

10. Paragraphs 1 through 9 are incorporated by reference as though set forth in their entirety herein.

11. Pursuant to Sections 107.1810 and 107.1830 of the Regulations, 13 C.F.R. §§ 107.1810, 107.1830, the parties agree that WestVen has reached a level of capital impairment constituting an event of default on Debenture Nos 1 and 2.

12. The parties have agreed to a permanent injunction of certain activities, WestVen's forfeiture of its license as an SBIC, and the appointment of SBA as receiver of WestVen, pursuant to Sections 308(d) and 311 of the Act, 15 U.S.C. §§ 687(d), 687c.

13. The parties agree that as of February 15, 2004, WestVen is indebted to SBA for the total sum of \$2,090,035.76 under Debenture No. 1, including principal of \$2,000,000 and accrued interest in the amount of \$90,035.76 with a per diem interest rate of \$358.36.

14. The parties agree that as of February 15, 2004, WestVen is indebted to SBA for the total sum of \$2,101,543.01 under Debenture No. 2, including principal of \$2,000,000 and accrued interest in the amount of \$101,543.01 with a per diem interest rate of \$442.74.

**CONCLUSION**

**WHEREFORE**, SBA prays that the Court enter the Agreed Consent Order and Judgment attached hereto as Exhibit 1 (finding the following:

A. That WestVen, its partners, officers, agents, employees, financial managers, and other persons acting on its behalf, in concert or participation therewith agree to refrain from: (1) making any disbursements of WestVen's funds; (2) using, investing, conveying, disposing, executing or encumbering in any fashion any funds or assets of WestVen, wherever located; and (3) violating the Act or the Regulations promulgated thereunder;

B. That the parties agree that WestVen has reached a level of capital impairment constituting an event of default on Debenture Nos 1 and 2.

C. That WestVen agrees to surrender all of its assets, wherever located to this Court's exclusive jurisdiction and agrees to the appointment of SBA as permanent receiver of WestVen for the purpose of liquidating all of WestVen's assets, satisfying the claims of creditors therefrom in the order of priority as determined by this Court, and pursuing causes of action available to WestVen against third parties, as appropriate;

D. That the parties agree to judgment against WestVen and in favor of SBA in the amount of \$2,090,035.76 as of February 15, 2004 under Debenture No. 1, including principal of \$2,000,000 and accrued interest in the amount of \$90,035.76 with a per diem interest rate of \$358.36 until the date of judgment, plus post judgment interest pursuant to 28 U.S.C. § 1961 as of the date judgment is entered; and

E. That the parties agree to judgment against WestVen and in favor of SBA in the amount of \$2,101,543.01 as of February 15, 2004 under Debenture No. 2,

including principal of \$2,000,000 and accrued interest in the amount of \$101,543.01 with a per diem interest rate of \$442.74 until the date of judgment, plus post judgment interest pursuant to 28 U.S.C. § 1961 as of the date judgment is entered.

**UNITED STATES OF AMERICA**

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